

## **MINUTES**

### **MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION**

**Call to Order:** By **CHAIRMAN REINY JABS**, on March 12, 1999 at 3:12 P.M., in Room 413/415 Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Reiny Jabs, Chairman (R)  
Sen. Walter McNutt, Vice Chairman (R)  
Sen. Tom A. Beck (R)  
Sen. Gerry Devlin (R)  
Sen. Pete Ekegren (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Greg Jergeson (D)  
Sen. Ken Mesaros (R)  
Sen. Linda Nelson (D)  
Sen. Jon Tester (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Carol Masolo, Committee Secretary  
Doug Sternberg, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 499, 3/8/1999  
Executive Action: SB 361 (Discussion)

#### **HEARING ON HB 499**

**Sponsor:** REPRESENTATIVE HAL HARPER, HD 52, HELENA

**Proponents:** Katrina Scheuerman, Montana Audubon  
John Mundinger, Montana Stockmen, Farmers Union,

**Farm Bureau, Montana Grain Growers**  
**Tom Kilmer, Self**  
**Jim Barngrover, Lewis & Clark County Weed Board**

**Opponents:**     **Dale Smilie, American Motorcycle Assoc.**  
                     **Ramona Ehnes, Montana Trail Vehicle Riders Assoc.**  
                     **Doug Abelin, Montana Trail Vehicle Riders Assoc.**  
                     **Ken Hoovestall, Montana Snowmobile Assoc.**  
                     **Don Allen, Western Environmental Trade Assoc.**

**Informational:** **Doug Monger, Fish, Wildlife & Parks**  
                     **Jean Nelson Dean, Bureau of Land Management,**  
                     **United States Forest Service**

**Opening Statement by Sponsor:**

**REPRESENTATIVE HAL HARPER, HD 52,** This bill helps our effort to control weeds in Montana. It was taken from a bill carried last session by then **REP. ALVIN ELLIS.** The intent was to make weed control a requirement from Fish, Wildlife & Parks Off Highway Vehicle Program grants. **REP. ELLIS** agreed to drop the bill after the Dept. promised to voluntarily comply with the weed plan. Since then, there's been concern some grants have gone through without weed control. Before these grants are put in place, there should be a weed control plan.

Since last session, the federal share of motorized trails funding administered by the Fish, Wildlife and Parks Dept. has nearly tripled as result of the Federal Highway Funding Bill. The number of OHVs, Off Highway Vehicles, has doubled since 1990. We have more money for trails, more vehicles and frankly, we think we have a lot more weeds coming. I added language to address trespass related problems from OHVs on private and closed public lands. I intended this same fund could be used in case a perpetrator of damage and weed spreading couldn't be found, the landowner could go to this fund. The House took out that particular language. The restitution provision is still in the bill. The restitution in current trespass laws does not address weed damage.

If this bill passes, FWP will have additional incentive to not only ensure they get weed plans done before these trails go in, but also to prevent vehicle trespass. The provision that allows landowners to seek compensation may set more landowners' minds at ease about having these trails near their places. This message sends a clear message to the Dept. about priorities. We going to ensure that weeds and trespass plans are adequately addressed with a plan in place before the grants are authorized. Both **SENATORS BURNS** and **BAUCUS** have joined other western senators in

calling for increased attention to weeds. Noxious weeds are aggressively invading and replacing native plant communities. The acreage being infested is doubling every six years. On BLM and Forest Service lands, noxious weeds are spreading at the rate of 4,600 acres per day.

Vehicles are particularly effective for spreading weeds. Off highway vehicles have a lot of surface area to collect a lot of seeds. They have knobby tires and so not only do they collect seeds and deposit them, they also plow the ground. See picture distributed **EXHIBIT(ags56a01)**. These vehicles cover extremely long distances, especially during hunting season. An OHV loaded on a trailer in Missoula with heavy knapweed infestations can, in a few hours, be anywhere in the state and in the highest mountain ranges. Weeds come in from out-of-state on these vehicles as more and more out-of-staters use these in hunting.

It is particularly important we make sure trails for these particular vehicles have weed control plans, especially in remote mountain areas. It is extremely difficult to control those infestations. In those head water areas, the weeds come down not only the roads but the streams as well. Almost all the trails we're talking about are on some sort of public land, but they spread to private lands as well. I have a handout on controlling knapweed on Montana rangeland from the state Extension Service, **EXHIBIT(ags56a02)**, which has information on the number of seeds spread and how these OHV's can spread these. There's also a handout from the conservation district in Liberty County, **EXHIBIT(ags56a03)**.

Yesterday in Fish & Game, we heard a plan by **SENATOR SWYSGOOD** to try to limit outfitter use on two rivers. Just three counties, in their effort to control weeds on some of those rivers, had spent almost \$40,000. If you look on your Fiscal Note, to include a weed control plan with the state trails plan would cost \$10,000. How much of a savings could \$10,000 spent now produce later? Weeds are costing this state millions and millions of dollars, not just agricultural producers but all people who try to control weeds, especially people interested in wildlife. Very few animals eat these and convert the plant food productively.

***{Tape : 1; Side : A; Approx. Time Counter : 3.21}***

**Proponents' Testimony:**

**REP. JOE BARNETT, HD 32, Chairman, House Agriculture Committee,** Last session **REP. ELLIS** dropped his bill and we were to send out a letter directing BLM, FWP and State Lands to tell us what they were doing for weed control. I gave out copies of the letters I

sent out and the responses we got on what they were doing as far as weed control. **EXHIBIT (ags56a04)** It would be beneficial to you to know what has transpired and whether they have addressed this issue properly to this point. I wanted to make you aware of what has happened up to this point and the relationship of **REP. ELLIS's** bill to this one.

**Katrina Scheuerman, Montana Audubon,** This legislation will add an important tool in the battle against noxious weeds. Weeds clearly follow the activities of people and as **REP. HARPER** mentioned, OHVs can be a particularly bad source of weed by scarring the soil as they deposit weed seeds. Getting a hand on noxious weeds is an important step in protecting Montana's wildlife, as well as horticulture, agriculture, livestock and native plant communities. Montana's wildlife is dependent on native vegetation throughout the state. Noxious weeds have a tendency to crowd out these native plants at an alarming rate and often provide no value to wildlife.

**John Mundinger, Montana Stock Growers, Farmers Union, Farm Bureau, Grain Growers,** Weeds and trespassing on private land are issues that have been in the forefront for Montanan landowners for a long time. Agencies need to address issues that are relevant to the plans for the State Trails Program. We are disappointed the trespass language was stripped from this bill. In looking at the Fiscal Note, apparently FWP was not able to use the federal funding for restitution. If that is the case, I understand the deletion of subsection 2 in section 4 on page 3. I don't see the logic for taking out all other references to trespass.

I find it odd the reference to the Montana Environmental Policy Act on lines 6, 7 and 8 on page 2 has been deleted. We are talking about state actions when we're talking about development and implementation of a trails plan. You need compliance on those things. I could agree with the suggested deletion in subsection 3 of section 2, page 3, lines 3 and 4, depending upon the nature in which the Dept. did the MEPA documents. If they do a good MEPA document on the trails program, they could define the series of categorical exclusions and use that as a method to efficiently address MEPA compliance at the trails program. I encourage you to restore the language as addressed by the amendments on the House Floor.

**Tom Kilmer,** Speaking for self and grandparents' ranch on south fork of Dearborn River, Agricultural crops can't compete with noxious weeds such as leafy spurge, knapweed, or dalmatian toadflax. Livestock can't compete either. Noxious weeds are usually established upstream on public lands. Those weeds come

downstream in the creeks and rivers, enter into your irrigation system and the weed seeds get applied to crops. This bill is about habitat and forage for livestock and wild animals. Knapweed is neither forage nor habitat. Prevention is a lot cheaper than herbicides, as anybody who has tried to buy this stuff knows. Weed introduction from off road vehicle travel is the most devastating to summer and winter ranges. FWP needs to take responsibility for the spread of noxious weeds from their off road vehicle program. This bill would help insure weed prevention is done up front rather than costly control after they're spread.

**Jim Barngrover, Lewis & Clark County Weed Board,** We often hear from people in Lewis & Clark County about their concerns with weeds. We hear specifically from ranchers and farmers in the north valley and Big Belt area, and also the western valley up near Marysville and along the Continental Divide about their concern on the increased use of ATVs, All Terrain Vehicles, disruption of wildlife habitat, and especially spreading of noxious weeds. There are now problems with infestations in remote areas where there didn't used to be. They're very difficult to control in those remote areas. Prevention is something we're always trying to work with, because we know it's a lot less expensive. It would be most helpful if FWP, when working on putting in ATV or OHV trails, were to prioritize the spread of noxious weeds by preventing them where possible.

{Tape : 1; Side : A; Approx. Time Counter : 3.31}

**Opponents' Testimony:**

**Dale Smilie, American Motorcyclists Assoc.,** My problem is this bill is not what it appears. Responsible motorcyclists must do trail maintenance and work. Trails must be in good shape for continued riding opportunities. To get that work done, the riders' groups have put a fee on themselves of which 60% goes to FWP programs. Some trails historically went through boggy areas and you could see degradation and damage. When you talk to the Forest Service, a lot of the volunteer groups out there are motorized groups. On the funds we pay for trail bikes, money goes for the weed program. We pay weed funds in money we pay for license plates on the trailers or trucks or cars we use to haul OHVs to the trail head. If the motorcycle or ATV you happen to be on is street licensed, you pay their weed fund. We're paying for weeds. All the money you would responsibly use to do maintenance is taken for weeds. Weeds are a big problem, but shouldn't something be left to do maintenance and get trails routed out of boggy meadows.

The real problem with this bill is it's about studies. That's a good way to protest. If someone plans a study you don't like, protest it and have another study designed. If someone really didn't want off road riding out there, a good way to undo it would be to protest and spend all the money for studies so there wasn't any left for other things. That's the final result of this bill. I sure hope you don't pass it.

**Ramona Ehnes, Montana Trail Vehicle Riders Assoc.** In 1997, the Montana Trail Vehicle Riders Assoc., along with FWP, Forest Service, BLM, and Back Country Horsemen met at FWP headquarters in Helena to discuss strategies addressing noxious weed related OHV grant programs. They agreed applications for all Montana OHV program grants would now address noxious weeds and where they would be addressed at the project site and the surrounding areas. I have some information I think includes information that Mr. Barnett passed out. It has a sample of the pages of the 99 grant that comes out of the OHV funds and a section from one of our ranger districts on all the weed information they supply regarding the area the grant would take place in.

**EXHIBIT (ags56a05)** All representatives agreed those requirements are very important. They felt the education of trail users to prevent the spread of noxious weeds would have a more far reaching affect on the overall spread.

With the cooperation of several different partners, Montana Trail Vehicle Riders Association has taken aggressive action towards weeds. They have an OHV Youth Curriculum and noxious weeds are a great part of that. It's been taught in Butte schools in 1998, and plans are to extend it into Bozeman and Great Falls School Districts in the very near future. We have an "On the Right Trail" campaign and two trade booths which are displayed by the FWP, Forest Service and MTVRA at outdoor recreation shows and fairs across the state. We have dealer displays in OHV dealerships across the state with weed information, information about joining an organization and responsible use. In 1998, MTVRA received a grant through the Montana OHV program for \$15,000 to produce two thirty second public service announcements (PSAs) for television and to also purchase air time and do a mailing for information. That mailing will be going out next week. The PSA's are currently airing on radio and television stations across Montana. Free air time is notoriously at 11:00 at night so we purchased time in other slots.

MTVRA continues to provide weed identification brochures and weed awareness decals. We've talked about weed prevention or a combination of these items in all newsletters mailed out to our members. We have members from the county weed department come and talk to our people so they are familiar with weeds and know what's going on. In 1998 through the OHV fund, there was a

thousand dollars granted directly to the Musselshell Ranger District for weed control. A thousand dollars was granted to the Nine Mile Ranger District for weed control. In 1997 there was a \$27,600 grant to BLM for weed control in the Whitetail Pipestone area. In 1996 there was \$2,800 granted to Madison County Weed Board for weed control near Virginia City.

We plan to expand the "On the Right Trail" campaign. The OHV Youth Curriculum will be expanded in the schools. MTVRA, BLM, Forest Service and FWP will continue to air the PSA's throughout the coming years and will require that weed management plans are required on all of our projects we submit. With 18,953 OHV's registered in 1998, the OHV public has paid in excess of \$20,000 directly to the Montana Noxious Weed Trust Fund in 1998 alone. That program has been in place since 1990 and has probably contributed close to \$100,000 to the Noxious Weed Program. Montana OHV Program has approved grants for direct weed control and public education totaling \$47,000, not including the grants for youth curriculum or "On the Right Trail" program. MTVRA recognizes the seriousness of the spread of noxious weeds in Montana and has taken the lead in the nation with OHV groups concerning this issue. We're currently working with the National Off Highway Vehicle Conservation Council and American Motorcycle Association to develop a strategy for a national campaign about noxious weed control. We need to have that money to use for education and on the ground to help take care of the weeds that are already there, not for more studies. This bill would severely limit our chances of doing that.

**Doug Abelin, Montana Trail Vehicle Riders Assoc.** showed the PSA's developed by MTVRA. We're doing everything we think possible right now. We would like to be able to continue by putting money on the ground, rather than into the studies. Our program, even though it is state administered, is done on federal land. We can't ride state land so trespass and damage on state and private land is actually a law enforcement issue. If you're there, you're there illegally. We passed a bill through the Senate the other day to make it legal to use certain segments of the forest roads and that's where we ride. We'd appreciate your consideration to kill this bill.

**Ken Hoovestall, Montana Snowmobile Association,** We are obviously totally opposed to weeds and so consequently, we support weed control. That's why, a couple sessions ago, we proposed a percentage of our funding for our trail system be designated to the state weed control program. Since 1996, we have contributed about \$45,000 into that. There are enough plans in place now. When this bill was presented up last session, there was a lot of

testimony about all the different plans that are currently in place. It's a waste of time and money to have more plans made.

**Don Allen, Western Environmental Trade Association,** All of us involved in this issue on public and private lands for quite a understand it is something that has gotten out of hand, particularly on public lands. We think the vehicle riders groups are trying to approach it in the right manner. We stand in support of their position and against the bill.

**{Tape : 1; Side : A; Approx. Time Counter : 3.46}**

**Informational:**

**Doug Monger, Dept. of Fish, Wildlife & Parks,** read written testimony. **EXHIBIT(ags56a06)** **REP. HARPER** mentioned a list of ten projects he passed out to the House Committee when they heard this bill concerning areas where FWP did not comply with the intent of our letter with **REP. BARNETT**. We took a look at that list. The majority of those projects were granted prior to 1997 and the agreement between FWP and legislature for weed control. Four or five where the weed control plans were in place were Forest Service plans not specific to grant application. For our purposes, those were covered within the intent of our agreement. There were two projects on the list where FWP missed weed control plans. I can assure you, of the 131 applications we have in our office right now, any without a weed plan will be summarily rejected and sent back to the sponsor without consideration.

**Jean Nelson Dean, BLM, USFS,** We went to the meeting discussed previously about doing education and awareness of the weed problem. We remain ready and willing to assist in any way possible in this problem. We have also been working with volunteer groups to do weed control on our lands. BLM in Montana believes that NEPA, National Environmental Policy Act, now says trails or trail management plans on BLM lands must address weed management as an integral part of the proposed activity. We continue to cooperate with Montana Dept. of Fish, Wildlife & Parks, Forest Service and other state and local agencies in this matter. Cooperative weed management areas are needed in order to be successful in weed management program.

**{Tape : 1; Side : A; Approx. Time Counter : 3.52}**

**Questions from Committee Members and Responses:**

**SENATOR NELSON** I'd like you to expound on Section 4, damage to private property. It seems damage as far as weed infestation or erosion would be a hard thing to pin point. Weed infestation is



only going to show up a little at a time and will take years to progress. How are we going to nail somebody for that?

**REP. HARPER** In some cases, that's true. Some of these weeds can sprout almost overnight. The point you make is a good one and maybe that's why it was left off the other restitution laws in other sections. If you have a piece of land that gets infected and you can trace it directly to an OHV on your land, why shouldn't you be able to recover for that? Under current statute, you cannot.

**SENATOR NELSON** Why all this trespass stuff that was taken out?

**REP. HARPER** I believe the trespass language was taken out by the House Committee in conjunction with the provision which said the landowner could go to this fund for restitution. I think you ought to have a trespass control plan along with the trail plan. If you look on page 2, line five and look at a, b, c, d, those are the things we're asking. We're not asking for studies as some people have claimed. We're asking for a plan. I suggest if the Committee wants to reinsert trespass aspects of the plan, put it back in.

**SENATOR TESTER** Does FWP have weed plans instituted on ground they own?

**Doug Monger** Yes, they do. We are required by law to have a weed control plan with every county, whether or not we have property within that county.

**SENATOR TESTER** That does include the trails?

**Doug Monger** It does where those trails are on FWP property. Those plans are not specific to grants we grant out to clubs to do work on Forest Service or BLM property. The comprehensive trail plan we're working on today will have some overarching weed discussion in it relating to those trails.

**SENATOR TESTER** Is this bill going to accomplish anything that isn't already accomplished?

**Doug Monger** Yes, it will, in that I will never again forget two projects where we granted money through NTRA for any of our out grants.

**SENATOR TESTER** Is there a problem in this bill? Everybody is concerned about weeds and talks about having plans up and ready to go. Is the real problem the plan or the damage to public property?

**Doug Abelin** Somebody is way off base. By state law, we don't ride state land. If you're a licensed vehicle, you can ride on the roads in the State of Montana. Our off-road program is not directed to state and/or private land. Our program is done on federal lands. If a person is on state or private land and does an offense, we have legal law in court to address that. I don't see why this is being directed to us. We fully agree with weeds being a problem and addressing them, but we don't agree with being singled out when apparently we're one of the few trying to address it. If we're going to do it, do it to everybody so we have enough money to be effective.

**SENATOR MESAROS** You said the Dept. has a noxious weed management in place. Does that plan consist of prevention, control or both?

**Doug Monger** It's a comprehensive plan dealing with both prevention and control and is site specific plan for each of the properties we own. For a fishing access site, the plan would identify any weed problems we have today and go so far as to map those weeds, identify where they're at, and the type of control best used, whether chemical, mechanical or biological. It would even be specific in some cases as the time of year we'll do the control and who we'll do it with, department employees or contracting with the county. By law, we have to take each of these plans to the county weed board or weed supervisor and have concurrence that those plans are adequate on our property. Those plans are then concurred on with the Dept. of Agriculture. We have a programmatic plan for our entire region and site specific plans within each of those areas.

**SENATOR EKEGREN** Does this damage to private property include damage to crops, damage from erosion and from weed infestation? Wouldn't that be in the law today?

**Doug Monger** I believe it is today under the trespass statutes. I'm not sure restitution is as strong in current law.

**SENATOR EKEGREN** Is this controllable without outlawing ATV's?

**REP. HARPER** That's a greater question. Can you really control weeds without outlawing ATV's? No way am I going to try to outlaw these things. All I'm asking in this bill is that there be a weed control plan before the state grants money for these trails.

**SENATOR DEVLIN** When you go riding on private land, there are trails established by the Dept. and you never vary off that trail. It looks kind of boring. Nobody wavers off to go behind a bush or anything, and you come back on the same trail. Do we

have a bigger problem where they're not paying attention to where the trail is?

**Doug Abelin** Our program isn't done on private or state land.

**SENATOR DEVLIN** There's private land next to the federal land you're riding on.

**Doug Abelin** We address weeds as best we can. If in fact somebody did that, we would do what we could to help mitigate or change the trail or address weeds.

**SENATOR BECK** There are a lot of amendments done on this bill after you introduced it. One was to take the trespass out and the other, if a violator cannot be identified, FWP had to pay restitution. If some of this was put back into the bill, would it get through the House?

**REP. HARPER** If you put the provision back on page 3, starting on line 18, the House would have some real heartburn. I don't think that money can be used for those purposes; it has to be used for grant purposes. If you put the trespass control on page 2 back into the trail plan, I think the House would accept it because there is logic in the distinction between those two. How are you going to control trespass? You see a herd of elk going over the hill and would like to get a look to see if that was a bull in the middle of the herd. Those kinds of things happen so there should be trespass control plan in the plan.

**SENATOR MCNUTT** Are these trails only used by off highway vehicles? Are you saying no one else using that trail can spread any weeds, just this group?

**REP. HARPER** These trails can be used by anything in terms of foot, horse, bike or OHV traffic, but not by full sized four wheel drive vehicles. There should be a trespass and weed control plan in place for that trail that everything would be subject to.

**SENATOR MCNUTT** Section 4 only relates to off highway vehicles and none of the other people using that trail. I'm curious why we singled out that group.

**REP. HARPER** I put that in there to ensure infestations by those types of vehicles, which are the primary object of these trails, would be covered and could be addressed. If I, as a hunter or angler, had a fund the landowner could go to pay for trespasses by anglers or hunters, that would be good public relations as well as a good mechanism for a landowner to get compensation.

**SENATOR HOLDEN** You talked in your letters about spending money on plans and surveys and studies. How are you getting to there out of this bill?

**Dale Smiley** If somebody's goal was not to have OHV use out there, and that is some peoples' goal, you know how EIS's and those things go. You keep protesting and making more studies. It's a good way to use all the funds. That's how it will be used by some people when it ought to be used for direct on the ground maintenance and weed control.

**SENATOR DEVLIN** How exactly are these trails established? Do you establish them in the Dept.?

**Doug Monger** No, we do not. The trails, because they're typically on Forest Service property, are established through the Forest Travel Plan. I'm not sure the mechanism on BLM property. We as an agency do not establish a trail. The granting is only going to repair damage on existing trails. Those trails and projects are there at the will of the landowner, which is the federal agency.

**SENATOR DEVLIN** I'd like to know how the Forest Service establishes these trails in the first place and what is the process by which they monitor what's happening as far as weeds.

**?????** As a former bureaucrat, I used to interact a lot between our state agency and some of the federal agencies. Both BLM and Forest Service in this state go through a fairly comprehensive land management planning process. For BLM, it is the Federal Land Planning and Management Act and for the Forest Service, the National Forest Management Act, breaking that down into area plans. A piece of that includes the development of Transportation Plans for National Forests and for the areas and the districts within BLM. It's my understanding the federal lands affected by this are lands for trails that are allocated for compatible use.

It's similar to the concern the Wilderness Association has with snowmobiles; you're allowing people to get into areas with a motorized vehicle they couldn't get to before. Some users on those trails don't necessarily stay on the trails. Trespass is not necessarily trespass because the trail itself is on private land, but trespass because of where some people can now get due to the trail. They have the opportunity to get off the trail and go somewhere else. Weed control and the concern for trespass go beyond the trail itself.

**Jean Nelson Dean** We'll do a National Environmental Policy Act analysis, which is either an environmental assessment or an environmental impact statement on any trails or trail management plans on BLM land. Within that we will address weed management. What we do depends on the situation. We have what we call Recreation Area Management Plans. Those are fairly specific and they come out of the NEPA analysis. We have law enforcement that watches out for those types of activities occurring. We manage the areas that are set aside as Recreation Management. That's not to say there's not somebody who illegally establishes roads, but we do pursue that activity.

**{Tape : 1; Side : B; Approx. Time Counter : 4.19}**

**CHAIRMAN JABS** It's mentioned these grants won't be allotted until a plan is developed. Who develops the plan, FWP?

**REP. HARPER** The person responsible for developing the plan would be responsible for including weed control and trespass control, if the Committee were to put that back in. If you look at the Fiscal Note, there is a state comprehensive plan being developed. This bill would require that comprehensive plan to address weed control as well. Doug Monger mentioned there will be a weed discussion in the plan. I don't think that is the same as a weed control plan. On the second page of this bill, you'll see what we expect as a weed control plan. If you look at the first assumption on the Fiscal Note, you'll see FWP has contracted for the writing of a state trails plan. The contractor believes it would cost an additional \$10,000 to include weed and trespass control. That seems pretty cheap for a state wide plan, but it tells me maybe they aren't going to put one in.

**CHAIRMAN JABS** It would be hard to develop a plan unless you can only ride before the weeds go to seed. Unless you have a wash station on the trail, it would be pretty hard to monitor.

**Closing by Sponsor:**

**REP. HARPER** On page 3 you see the requirements listed, a through e. To totally stop the spread of weeds, yes, we should have a bath right there. That isn't going to happen so we want to do the best we can. The effort the trail riders are making is very commendable and should be applauded. Those efforts are great and I hope they step them up.

We are not doing all we can to fight weeds, especially when we are not requiring all trail plans to have a weed control plan. Some have been drafted and possibly this comprehensive plan will be drafted without one, unless you mandate it. I have faith in

what Doug Monger tells me, that from now on they will make every effort to do that. I'm not sure how long that will last. We pass bills to make sure things will be permanent.

This bill is about a plan that puts the money on the ground. We're not going to get weeds fought without a plan. Noxious weeds are slowly exploding throughout the State of Montana. The public lands up water and the headlands are often the places these weeds are being spread. They come down stream and once they are established on public land, you have widespread objections to massive use of herbicides. Prevention is the best and cheapest way to control weeds.

***{Tape : 2; Side : A; Approx. Time Counter : 4.25}***

**EXECUTIVE ACTION ON SB 361**

**Doug Sternberg** passed out 36101 and 36103 amendments. The 101 amendments were attached in mid February for the purpose of a revised Fiscal Note. He wanted members to have a copy of the 101 amendments for comparison with revised amendments, 36103. The 103 amendments would incorporate certain of the 101 amendments but also incorporate a number of other substantive changes to the 101 amendments. **SEE EXHIBIT (ags56a07), EXHIBIT (ags56a08).**

**SENATOR MESAROS** As introduced, the bill called for complete transfer of the main responsibility from Fish, Wildlife and Parks to the Dept. of Livestock. There were concerns with funding and the issue of the programmatic Environmental Impact Statement, along with other concerns. In reviewing this with all parties and Dept. of Livestock, there was some reservation about adequate funding and assuming all the responsibility included in the original proposal. The amendments on 101 delayed the effective date and had reference to the environmental assessment. After we adopted those, I received some other concerns. I requested we hold this over transmittal, worked with all parties, tried to regroup to see if we couldn't narrow the scope of this and yet arrive at some of the concerns.

I suggest today we remove the 36101 amendments and adopt 36103 amendments. In doing that, we're leaving the permitting and programmatic review with Fish, Wildlife and Parks. We would be transferring the record keeping and the fencing. All that is under the negotiated rule making. The exterior fencing is an issue of high concern with alternative livestock. We want someone to administer these rules to the letter of the law, no more, no less. It was felt Dept. of Livestock was more experienced in this and would more adequately address it. Dept. of Livestock has indicated they are comfortable with this move

and could accurately accommodate this amount. With that, I would ask we reconsider our actions on amendments 36101.

**Motion/Vote:** SEN. MESAROS moved RECONSIDER ACTIONS ON AMENDMENTS SB036161. Motion carried unanimously.

**Motion:** SEN. MESAROS moved that AMENDMENT SB036103 BE ADOPTED.

**SENATOR MESAROS** The main changes would reduce the dual reporting and create a central depository for all livestock records and better utilize Ag's resources. Fish, Wildlife and Parks would put out notice of any violations for licensure revocation purposes and unresolved discrepancies. Because Dept. of Livestock is already in charge of quarantine and handling facilities, it makes sense they should be responsible for the exterior fencing. We're not changing any rules in the fencing requirements.

Dept. of Livestock receives half of application and license renewal fees because they'll be involved in the Montana Environmental Policy Act (MEPA) review, fencing, record keeping and ongoing enforcement issues. Dept. of Livestock is a fees based on costs agency. The industry supports raising per capita fees to cover outstanding Dept. costs. There's also an additional increase in fees so there'll be additional funds received to cover costs the Dept. might incur in the changes. Both the industry and FWP believe the programmatic is still appropriate and we would leave that with FWP to complete. That is a brief summary of the changes.

**SENATOR BECK** You still have some functions pertaining to the environmental review and assessment to your livestock. You will have the fencing and record keeping. Your income will be one half of the fees collected pursuant to subsections one and two. How much income do you think you'll get?

**Mark Bridges, Dept. of Livestock,** \$12,000.

**SENATOR BECK** Can you do this for about a third of a FTE?

**Mark Bridges,** With the increase in the per capita tax, that would triple. The per capita on game farms would have to go over \$30 to cover that and the current deficit that we're operating under with the game farm.

**SENATOR BECK** What are your duties as of right now?

**Mark Bridges** We are responsible for disease control within the game farm area, the quarantine facility and alternative livestock

movement identification, transportation, etc.

**SENATOR BECK** I'm concerned with trying to get you more money to pick up what you're doing here. If \$12,000 is all the revenue you're going to get, you're going to have to go back into your own budget to fill your obligations to this.

**Mark Bridges,** Yes, we are, until the per capita can be increased.

**SENATOR BECK** I know **HB 2** has cut money out of their budget already. They're under a strain.

**SENATOR MESAROS** I ask Mark Taylor to go over the revenue generating schedule. My schedule reflects considerably more than that.

**Mark Taylor** With regard to the outstanding balances incurred by the Dept. and the licensing fee increases, I can supply the Committee with figures I received from Dept. of Fish, Wildlife & Parks. Roughly \$9,000 was collected for renewal fees in 1997, so if you double those, it's \$18,000 initially. Per FWP's records, you get roughly \$6,000 in application fees, which would be \$24,000 which would get you roughly to the \$12,000 if you split those in half. The renewal fees are going to significantly increase throughout time as new applications come in. Under the bill, there is approximately \$7,000 annually inspected to deal with the import of game animals. The industry would support whatever per capita fee increase Board of Livestock feels they need to make the Dept. whole.

**SENATOR BECK** I think it should have been in the bill. I don't want the Dept. of Livestock to get stuck with something they can't afford.

**Mark Taylor** The last thing the industry wants is to bring additional regulatory functions to the Dept. of Livestock, creating a burden that they can't take staff wise and more importantly, fiscally.

**SENATOR BECK** Can we come back with that figure before we move on these so we don't put the Dept. of Livestock in a position where they have to go into existing struggling funds.

**SENATOR MESAROS** Certainly. It was my understanding the per capita fees would be established to cover any cost to do that. That's why I was forwarding it at this time.



**SENATOR BECK** I would be much more comfortable if game farmers know exactly what the assessments are going to be and the Dept. knows exactly what they're going to get.

**SENATOR DEVLIN** I agree as far as establishing the fees in the bill. What of kind of expense do you incur over and above what you're getting fees for up to date? I'm curious where your balance sheet is in the last couple years.

**George Harris** We have about 3,061 domestic ungulates that are generating \$12.00 a head. They're coming up short by our costs by \$18,000 per year so we're already \$36,000 in the deficit. We're going to have to raise the fees on domestic ungulates from \$12.00 a head to \$30.00 a head in order to cover what we're short now, plus what this bill does to us.

**SENATOR DEVLIN** What was the main reason for this \$18,000 loss the last couple years?

**George Harris** The main reason was start up costs. We had to purchase a pickup. We had a game farm manager and also we had operational costs. There's been a lot of rule making and a lot of operational costs involved with the rule making. The continuing costs staying in the deficit are the \$18,000 to \$20,000 we are running on a deficit. The Board is going to have to increase the fee to make us whole on the deficit, and increase the fee again from \$12 to \$30 a head in order to run this program the way it's set up.

**SENATOR DEVLIN** I want the fee in here. I don't want to run the Dept. into debt. If they happen to hit a lawsuit or something, I don't want those of us who pay fees on livestock to support livestock, to be reassessed or have our rates go up for the benefit of someone else.

**CHAIRMAN JABS** Which board would have to raise the fees?

**George Harris** The Board of Livestock is authorized to raise that per capita fee.

**SENATOR DEVLIN** Are they limited as to how much they can raise it?

**George Harris.** By statute, we cannot increase per capita fees above 110% of the previous three year average of all fees collected by the entire Dept. There is that restriction in the law. Because there is such a small number of domestic ungulates, we can do it within the 110% quite comfortably.

**SENATOR DEVLIN** Does the Board intend to do that?

**George Harris** Yes, the Board is very concerned. They did not want this bill to come over here without us being able to fund it. They were neutral as to the policy, but their main concern was it be fiscally sound when it gets here, because we're already operating at a deficit.

**SENATOR HOLDEN** Getting out from under the thumb of Fish and Game sounds like quite an expensive proposition, \$30.00 a head or more. Is there that much profit in elk to be paying that much money per head?

**Bob Spoklie** Our people have paid between \$300,000 to a half million dollars in attorney fees in the last ten years just to stay in business. Mr. Harris did state some of the money spent has been start up fees. Those start up fees have already been accomplished. We are willing to assess ourselves whatever it takes. Like he said, they would like to have another \$18 on top of this. When I visited with him earlier, he said asking for up to \$18 additional doesn't mean they're going to need up to \$18 once the program gets up and running. They figured things on some 3,000 animals; we now have 4400 animals in the state. That's one fourth more than was stated that will be taxed. That's a considerable difference and would bring that fee down. I'm not saying we have to have it down. Our industry would sooner pay that and be regulated by an agency that's used to handling livestock, than one that's philosophically against us continually.

**SENATOR HOLDEN** Do you have verification on tax rolls that you have the number of livestock out there?

**Bob Spoklie** We have those figures. Luella has every animal in the state on her computer.

**George Harris** The head count we use has to come from the Dept. of Revenue's actual tax rolls collected from the counties. We receive a head count number from the county from their records and it's been consistent at 3,061 the past couple years. If they go up, they go up. They might exist out there, but they're not being reported in the counties. By law, we can only charge a fee on the head count we receive from counties.

**SENATOR HOLDEN** If we transfer this out of Fish & Game, is your Dept. going to be coming down on some expenditures.

**Paul Sihler, Fish, Wildlife & Parks,** In the last five years, the Dept. has received about \$36,000 to \$38,000 in license

application and renewal fees from the game farm industry. In that same time period, we spent over one million dollars regulating and licensing the industry. The difference between the two were things we redirected within the agency from existing programs. I would expect our costs would go down somewhat, and we would redirect those resources back into what they were doing prior to working with the game farm program.

**SENATOR BECK** If you've got a \$12,000 deficit the last two years and you've had the authority to raise this fee, how come you haven't?

**Mark Bridges** The Board of Livestock has to analyze and reassess the per capita in January of every year. CI-75 passed in November. They did the analysis of per capital tax and we had to wait until CI-75 went away to address that.

**SENATOR TESTER** You said you can raise the fees 10%?

**George Harris** The statutes says no more than 110% of the prior three year average.

**SENATOR TESTER** And the fees for the last three years have been \$18 a head?

**George Harris** It's been \$12 a head and generated about \$36,000 worth of revenue.

**SENATOR TESTER** So how come you're raising to \$30 a head?

**George Harris** We're talking about the entire per capita fee for the entire Dept. This is a very small head count. The statute allows us to do it by species, currently \$1.20 for cattle because you have two million cattle as opposed to three thousand domestic ungulates. The Board sets a dollar amount based upon the Fiscal Notes.

**SENATOR HALLIGAN** Since the hearing I haven't heard anything from Fish & Game Dept. on amendments with respect to their Dept.

**Paul Sihler** When you divided up the statutes in the 1995 session, you did it by expertise and interests. Fish, Wildlife and Parks interests then and now were related to theft of wild animals and affect on wild game. The central issues are the fences and record keeping. You have fencing requirements in the game farm statutes because of wildlife; what's inside and outside the fence looks pretty much the same unless you can see a tag. Our concern is in maintaining those fences to prevent ingress and

egress and in being able to address and prosecute theft of wildlife, which we have done.

We prosecute theft of wildlife based on the record keeping. This bill moves responsibility for the record keeping and fences over to Dept. of Livestock. In effect, that places the responsibility for enforcement and revoking game farm licenses with Dept. of Fish, Wildlife & Parks, but places all the information by which you have to do that in Dept. of Livestock. This creates an additional barrier and hurdle for effective regulation and our ability to enforce either theft or deal with ingress or egress problems. There are a couple of other things that are problems for us in this bill, but that's the principal thing.

Section 24, subsection 6, requires FWP to pay attorney fees for anyone who successfully appeals a decision by the Dept. It's not an even playing field where if they're not successful in their appeal, they pay our attorney fees. By our calculations, our revenues are reduced under this bill and our costs are increased with the programmatic environmental impact statement, which Dept. of Livestock estimated was \$200,000.

**SENATOR HALLIGAN** I ask Mr. Taylor to address the issues associated with the record keeping and enforcement. Is that the way you envisioned this working?

**Mark Taylor** We're transferring reports, record keeping and fencing to Dept. of Livestock. Dept. of Livestock currently has all the records dealing with inspection, importation permits, and animal tracking, so they already have the records dealing with on hands involvement with the animals. The only additional thing we would be putting on Dept. of Livestock is a report that's filed January 1 and July 1 of each year. Tracking numbers and that type of thing are the primary portions of that report. To send them to FWP when DoL has all the information is a duplication of services. If record keeping is transferred to DoL, any violations of the record keeping would be reported to FWP for licensure revocation purposes. That would be in the form of a letter so FWP could initiate their proceedings pursuant to their statutory authority. Discrepancies in animal numbers is currently the means by which FWP initiates unlawful capture investigations. If DoL currently has access to animal numbers and is the agency already administering movement of animal records, they're going to be the agency most knowledgeable in dealing with discrepancies. It's mandatory reporting to FWP so they can initiate their investigations.

When we went through the negotiated rule making process, we looked at the fencing issue. It's my understanding that the industry drafted the fencing requirements. Nobody wants their

animals to get out and we have drafted the best set of fencing rules in the country from the industry's perspective. There's not been one documented case of an elk getting out of fencing standards unless a gate was left open or there's been vandalism. The rules regarding the current fencing standards would be transferred to DoL. A lot of the environmental reviews done recently which discussed the exterior fencing issue levy addition site specific stipulations dealing with disease control issues. If they're looking at involving the exterior fencing with disease control issues, who better to administer or be responsible than DoL. With DoL being regularly on alternative livestock ranches to deal with quarantine or handling of animals, it makes sense those individuals also be able to inspect the exterior fences.

**SENATOR HALLIGAN** Clarify who is doing what record keeping so I can get a good understanding.

***{Tape : 2; Side : A; Approx. Time Counter : 5.18}***

**Paul Sihler** Dept. of Livestock requires transportation permits and they get those through the year when the animals are moved around. The statute requires the licensee currently submit a report to the Dept. at least twice a year and up to three times a year. FWP takes those reports and compares with the records from DoL to track animal numbers.

Mr. Sihler read from the bill. "DoL shall report any violations of this section or unresolved discrepancies in the records to Dept. of Fish, Wildlife & Parks." "If requested, the total number of alternative livestock on an alternative livestock ranch shall be made available to the Dept." We can't prosecute a theft on that basis. We need information about the individual animal and where it has gone. We have cases where an animal with the same tab number has gone different places at different times and it couldn't be the same animal. That's the basis by which we prosecute thefts. Under this requirement, the only thing they could give us is the total number of game animals. There were 96 animals on that game farm. That doesn't give us the information we need in order to determine whether the records are accurate and certainly doesn't give us the information we need to prosecute a theft.

The last stipulations we put on game farm fencing were in the Flathead area where there are shooter operations. They are in Class 1 grizzly bear habitat. There are black bear and wolves in the area and the concern has been predators getting into the game farm that has a shooting operation with gut piles. That's where we have actually had several appeals in the last couple weeks. That's been the issue on fencing.

**SENATOR HOLDEN** If an elk gets out of the pasture, will that elk come back to hay?

**Bob Spoklie** The history in the last 15 years has been the animal never leaves. 99% have gone out through an open gate and 99% have come back through the same gate.

**SENATOR HOLDEN** Is that because they are hooked on the feed base?

**Bob Spoklie** It's because they are domesticated and they don't want to leave the herd.

**SENATOR DEVLIN** Is there some other way to get rid of this rift in this bill? Can you get your heads together with Dept. of Livestock?

**Paul Sihler** There's no problem with getting our heads together with Dept. of Livestock. Based on some information and letters the Governor has received and based in part in the original hearing on this bill, the two agency directors and the Governor did meet to talk about this. The Governor and both directors acknowledged there were some legitimate issues here, but it seemed to them the majority of the issues were management issues and not something legislation would fix. The two directors and the Governor talked about having an independent third party consultant do a review of the game farm program, look at how things are working between the two agencies, how the MEPA process is being evaluated, and review what's working, what's not working and why and use that as a vehicle to address those problems. We think a programmatic environmental impact statement is a good idea. It would reduce the time in the licensing and permitting for a portion of the licensees.

**SENATOR DEVLIN** Would the Game Farm Advisory Council be involved in this any way?

**Paul Sihler** The Game Farm Advisory Committee Council has not been very active because the negotiated rule making process is going on. I expect the Game Farm Advisory Committee Council will come back into play with the negotiated rule making now over. It seems to me that would be an appropriate entity to involve in that process.

**SENATOR DEVLIN** If we don't do something and you get your heads together during the interim, if you don't come to some sort of a better agreement than what you've got now, it's Katie bar the door. It would behoove everybody involved to get this worked out as soon as possible.

**SENATOR NELSON** Since we already have this Game Farm Advisory group, it just seems crazy to be thinking about having another group. Can't this Game Farm Advisory group handle it and be an intermediary between Dept. of Livestock, Fish, Wildlife & Parks and the game farms?

**Paul Sihler** You're correct in that there's a role for the Advisory Council to play. I'd point out the Advisory Council is all donated time. They're private citizens donating their time and I suggest there's a level of detail and analysis, assessment, work and review they don't have the time to do themselves. That might be an appropriate body to serve as a policy body in reviewing the work that a third party finds in doing an independent review. There's a level of staff work that probably appropriately needs to be done to do this effectively. I'm not sure the Advisory members themselves can do that and I'm not sure it's effective for the two departments.

**SENATOR MESAROS** There's been problems for years. A lot is on the fencing. All of a sudden there's discussion of bringing an independent third party in only because, I'm believe, there's some legislation directed at it. I think it might be a positive step, but there are no guarantees of that happening. The negotiated rules are in place and explain exactly how the fence is to be constructed. Many times, the alternative livestock producers have to hire an attorney just to enforce the fencing requirements interpreted by Fish, Wildlife & Parks. This is just an attempt to have a Dept. enforce the fencing requirements as it is to the letter of the law, no more, no less.

I'm very sensitive to adequate funding for this. It's written right in the bill, the Dept. shall establish fees as authorized commensurate with cost as provided in that section. You've heard alternative livestock indicate they're willing to pay whatever fees. They've doubled the renewal fee and doubled the initial license, annual renewal fee from \$100 to \$200 and gone through and imposed a lot of increase in fees under section 12 to address this. I think the alternative livestock people are committed to paying this. That's a good faith effort to try to accommodate that.

**SENATOR JERGESON** With the adoption of these amendments, I assume a new Fiscal Note will be generated. The Fiscal Note has to cover what fees would be necessary to cover the regulatory scheme that is in here plus recover the deficit. This area is fraught with lawsuit potential. We'd need a Fiscal Note to identify how either or both Depts. are going to deal with the

costs of real potentials for lawsuits that may or may not be won by a Dept.

**SENATOR MESAROS** The amendments would have to be put on before another Fiscal Note could be produced.

**Vote:** Motion **carried unanimously.**



**ADJOURNMENT**

Adjournment: 5:23 P.M.

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SEN. REINY JABS, Chairman

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CAROL MASOLO, Secretary

RJ/CM

**EXHIBIT** (ags56aad)